

The opinion in support of the decision being
entered today is not binding precedent of the Board.

Paper 46

Filed by: Trial Section Motions Panel
Box Interference
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Filed: November 20, 2001

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

JOHN J. MEFFORD and JOHN B. HOMOELLE
Junior Party
(Patent 5,446,493)

v.

MARK L. JARAND
Senior Party
(Application 08/726,651).

Patent Interference No. 104,384

Before McKELVEY, Senior Administrative Patent Judge, and MEDLEY and TIERNEY,
Administrative Patent Judges.

PER CURIAM.

JUDGMENT

(Concession of Priority Pursuant to 37 CFR § 1.656(i))

Junior Party Mefford's principal brief on the issue of priority and/or derivation was due August 13, 2001. To date, Junior Party Mefford has not filed a principal brief. As set forth in 37 CFR § 1.656(i), when a junior party fails to timely file an opening brief, the Board may issue an order to show cause why junior party's failure to file a brief should not be treated as a concession of priority.

A telephone conference call was held on November 19, 2001, at approximately 10:30 a.m., involving:

1. Michael P. Tierney, Administrative Patent Judge.
2. Holly D. Kozlowski, counsel for Junior Party Mefford.
3. Blas P. Arroyo, counsel for Senior Party Jarand.

During the conference call, counsel for Junior Party Mefford stated that they would not be filing a principal brief. The Administrative Patent Judge asked whether Junior Party Mefford required an order to show cause prior to entering judgment against it. Junior Party Mefford stated that no order to show cause was necessary prior to entering judgment.

It is:

ORDERED that judgment on priority as to Count 2 and Count 3 (Order Redecaring Interference, Paper No. 37), the two counts in the interference, is awarded against Junior Party Mefford.

FURTHER ORDERED that Junior Party Mefford is not entitled to a patent containing claims 1-15 (claims 1-8 corresponding to Count 3 and claims 9-15 corresponding to Count 2) of Mefford's U.S. Patent No. 5,446,493.

FURTHER ORDERED that Senior Party Jarand is not entitled to a patent containing claim 13 of Jarand's U.S. Application No. 08/726,651. (Memorandum Opinion and Order, Paper No. 35).

FURTHER ORDERED that a copy of this final decision shall be placed and given a paper number in the file of Junior Party Mefford's U.S. Patent No. 5,446,493 and Jarand's U.S. Application No. 08/726,651.

FRED E. MCKELVEY)	
Senior Administrative Patent Judge)	
)	
)	
)	BOARD OF PATENT
SALLY C. MEDLEY)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
MICHAEL P. TIERNEY)	
Administrative Patent Judge)	

cc: (via First Class Mail)

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